

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
	)	Civil Action No.
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
NAVISTAR INTERNATIONAL	)	
TRANSPORTATION CORP.,	)	
	)	
Defendant.	)	

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and by authority of the Attorney General, filed the Complaint herein against Navistar International Transportation Corp. ("Navistar"), alleging violations of the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq., ("the Act") in connection with certain heavy duty diesel engines manufactured and sold by Navistar, and has filed similar complaints in related actions against other heavy duty diesel engine manufacturers; and

WHEREAS, Navistar denies the violations alleged in the Complaint and believes that it fully complied with the law; and

WHEREAS, EPA is charged with primary responsibility for enforcing the Clean Air Act; and

WHEREAS, EPA has conducted an extensive investigation of the matters which are the subject of the Consent Decree; and

WHEREAS, the United States has determined that the comprehensive relief set forth in this Consent Decree will provide protection for the public health and welfare of the citizens of the United States; and

WHEREAS, the United States and Navistar have consented to entry of this Consent Decree without trial of any issues; and

WHEREAS, the United States and Navistar agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and Navistar in good

faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law and without this Consent Decree constituting an admission by either Party with respect to any such issue, and the Court having considered the matter and being duly advised, it is hereby ORDERED AND DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the Parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Title II of the Act, 42 U.S.C. §§ 7521-7590.

2. For purposes of this action and this Consent Decree, Navistar does not contest that venue is proper in this District pursuant to Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524.

#### II. DEFINITIONS

3. Unless specifically defined in this Section or elsewhere in this Consent Decree, terms used herein shall have the meanings currently set forth in Sections 216 and 302 of the Act, 42 U.S.C. §§ 7550 and 7602, and any regulation promulgated under Title II

of the Act, 42 U.S.C. §§ 7521-7590. The following definitions shall apply for purposes of this Consent Decree.

"Act" means the Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.

"A,B&T" means the motor vehicle engine emission averaging, banking and trading program set forth in 40 C.F.R. §§ 86.091-15, 86.092-15, 86.094-15, and 86.004-15.

"AECD" or "auxiliary emission control device" means any device or element of design that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of the emissions control system.

"California Settlement Agreement" means the agreement between Navistar International Transportation Corp. and the California Air Resources Board resolving California claims with respect to matters addressed in this Consent Decree.

"CARB" means the California Air Resources Board.

"Certificate of Conformity" or "Certificate" means a certificate issued by EPA pursuant to Section 206 of the Act, 42 U.S.C. § 7525.

"Consent Decree" or "Decree" means this Consent Decree, including the Appendices specifically identified herein.

"Date of Entry" means the date on which this Consent Decree

is entered as a final judgment by the United States District Court for the District of Columbia.

"Date of Filing" means the date this Consent Decree is filed with the Clerk of the United States District Court for the District of Columbia.

"Day" means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period of time shall run until the close of business of the next working day.

"Defeat Device" means an AECD that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(a) such conditions are substantially included in the Federal emission test procedure;

(b) the need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(c) the AECD does not go beyond the requirements of engine starting.

"Engine Rebuild" means an activity, occurring over one or more maintenance or repair events, involving:

(a) disassembly of the engine, including removal of the cylinder heads; and

(b) the replacement or reconditioning of more than one major

cylinder component in more than half the cylinders.

"EPA" means the United States Environmental Protection Agency.

"EURO III Composite Value Limits" means the Euro III Test Protocol-based composite value emission limits to which Navistar's New Technology HDDEs are certified, pursuant to Paragraph 11 of this Consent Decree.

"EURO III Test Protocol" means the test protocol for measuring diesel engine emissions set forth in Appendix B to this Consent Decree.

"FTP" means the Federal Test Procedures for HDDEs specified in 40 C.F.R. Part 86.

"HDDE" shall mean a diesel, as defined in 40 C.F.R. § 86.090-2, heavy duty engine, as defined in 40 C.F.R. § 86.082-2(b) for which a United States Certificate of Conformity is sought or required in the United States.

"HHDDE" means an HDDE designated by Navistar and certified by United States as a motor vehicle heavy-heavy duty engine in accordance with the definition of "primary intended service class" in 40 C.F.R. § 86.085-2.

"LHDDE" means an HDDE designated by Navistar and certified by United States as a motor vehicle light-heavy duty engine in accordance with the definition of "primary intended service class" in 40 C.F.R. § 86.085-2.



"Low NOx Rebuild Engines" means Navistar's Model Year 1998 MHDDE Pre-Settlement Engines equipped with the CPFE Strategy and manufactured after November 1, 1997.

"Low NOx Rebuild Kit" means the software and other items required by Paragraph 37 for removing the CPFE from Low NOx Rebuild Engines included by Navistar in a rebuild kit for purposes of complying with Section VII.F.

"Major Cylinder Component" means piston assembly, cylinder liner, connecting rod, or piston ring set.

"MHDDE" means an HDDE designated by Navistar and certified by the United States as a motor vehicle medium-heavy duty engine in accordance with the definition of "primary intended service class" with 40 C.F.R. § 86.085-2.

"Navistar" means Navistar International Transportation Corp.

"New Technology HDDEs" means any newly-designed on-road four-valve head, eight cylinder (V8) or inline six cylinder (I6) HDDE manufactured by Navistar after August 1, 2002.

"NMHC" means non-methane hydrocarbon.

"Nonroad CI Engine" means a compression-ignition engine subject to the regulations in 40 C.F.R. Part 89.

"NOx" means oxides of nitrogen, as defined in 40 C.F.R. § 86.002-2.

"NOx plus NMHC Limit" means the NOx plus NMHC emission levels at which Navistar engines are certified pursuant to

Paragraph 11 with this Consent Decree.

"On-Road Pull Ahead Plus Euro Limits" means:

(a) an FTP Limit of 2.4 g/bhp-hr for NOx plus NMHC, or 2.5 g/bhp-hr for NOx plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr, and;

(b) Euro III Composite Value Limit of 2.4 g/bhp-hr for NOx plus NMHC, or 2.5 g/bhp-hr for NOx plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr (i.e., 1.0 times the applicable NOx plus NMHC Limit) and 1.0 times all other applicable regulated emissions when tested using the EURO III Test Protocol in accordance with Appendix B.

"Other Settling HDDE Manufacturers" means Caterpillar Inc., Cummins Engine Company, Detroit Diesel Corporation, Mack Trucks, Inc., Renault VI, and Volvo Truck Corporation.

"Paragraph" means a portion of this Consent Decree identified by an Arabic numeral.

"Parties" means the United States and Navistar.

"PM" means particulate matter.

"Pre-Settlement Engines" means those engines manufactured by Navistar prior to Date of Entry and equipped with any of the fuel-injection timing strategies described in the Complaint.

"Section" means a portion of this Consent Decree identified by a Roman numeral.

"United States" means the United States of America.

"Useful Life" means the applicable useful life of an engine as defined in 40 C.F.R. Part 86.

### III. APPLICABILITY

4. This Consent Decree applies to and is binding upon the United States and Navistar, its agents, successors, and assigns. Any change in Navistar's ownership or corporate or other legal status shall in no way alter Navistar's responsibilities under this Consent Decree. In any action to enforce this Consent Decree, Navistar shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, or employees to take actions necessary to comply with the provisions hereof.

### IV. FACTUAL BACKGROUND

5. Navistar has manufactured and sold, offered for sale, or introduced or delivered for introduction into commerce in the United States new motor vehicle engines, including the Pre-Settlement Engines.

6. Each Certificate of Conformity issued to Navistar by EPA during the time period relevant to the claims alleged in the Complaint provides that the Certificate covers only those new motor vehicle engines which conform in all material respects to the engine design specifications provided to EPA in the Certificate application for such engines; except any Certificate of Conformity issued by EPA for engines that Navistar intended or intends to sell only in California provides that the Certificate

covers only those new motor vehicle engines which conform, in all material respects, to the engine design specifications described in the application submitted to CARB. In addition, each Conditional Certificate of Conformity issued to Navistar for model year 1998 specifically provides that the Certificate does not cover engines equipped with defeat devices.

7. From 1996 through approximately November 1998 certain Navistar engines manufactured for sale, or installed in vehicles manufactured for sale, in the United States contain computer-based strategies to adjust the timing of fuel injection, including, but not limited to the Cruise/Power/Fuel-Economy ("CPFE") strategy on all of its six cylinder electronically-controlled HDDEs. The United States alleges in its Complaint that one or more of these strategies has the effect of advancing injection timing relative to the injection timing used by Navistar to control NOx emissions on the FTP. The United States further alleges that one or more of these strategies: has an adverse effect on the engine's emission control system for NOx; was not adequately disclosed to EPA, and is a defeat device. The United States further alleges that the engines equipped with these strategies are not covered by an EPA-issued Certificate of Conformity.

8. Navistar denies all of the material allegations of the Complaint and contends that: its engines fully comply with NOx

emission limits; it fully and adequately disclosed its emission control systems to EPA; it did not employ defeat devices prohibited by the Act, and the engines equipped with the strategies are covered by EPA-issued Certificates of Conformity.

## V. OBJECTIVES

9. The objectives of this Consent Decree are:

(a) to resolve disputed claims arising under the Act and ensure compliance with the Act by Navistar by removing or modifying the strategies which the United States alleges are defeat devices and providing for emissions and compliance monitoring during the term of this Decree through supplementary test requirements and reporting requirements;

(b) to reduce ambient levels of air pollutants by accelerating implementation of more stringent on-road and Nonroad CI Engine emission standards and other emission reduction programs;

(c) to implement an in-use test program; and

(d) to resolve the United States' claims for civil penalties and injunctive relief as described in Paragraph 84 below.

## VI. REQUIREMENTS FOR ON-ROAD HDDES

10. In any application for a Certificate of Conformity submitted to EPA subsequent to the Date of Entry, Navistar shall comply with all AECD reporting requirements found in 40 C.F.R. Part 86, Subpart A, consistent with EPA's regulations, including

the requirements to identify and provide a detailed description of each AECD, and to provide a detailed justification for each AECD that results in a reduction in the effectiveness of the emission control system. In addition, in any application for a Certificate of Conformity for an on-road HDDE to be manufactured on or after October 1, 2002, Navistar shall indicate whether the engine is a New Technology HDDE.

VII. ADDITIONAL INJUNCTIVE RELIEF/EMISSION REDUCTION PROJECTS

A. Model Year 2004 Standard Pull-Ahead

11. Navistar shall not manufacture any New Technology HDDE subject to the Act that is not equipped with emission control technology designed in good faith and through diligent and timely efforts to meet the On-Road Pull Ahead Plus Euro Limits. EPA shall not deny a Certificate of Conformity for a New Technology HDDE manufactured prior to January 1, 2004, however, on the grounds that it exceeds the On-Road Pull Ahead Plus Euro Limits, provided that the engine for which certification is sought meets all other requirements of the Act and EPA's regulations, plus all emission limits at or below:

(a) an FTP Limit of 3.1 g/bhp-hr for NO<sub>x</sub> plus NMHC, or 3.2 g/bhp-hr for NO<sub>x</sub> plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr, and;

(b) Euro III Composite Value Limit of 3.1 g/bhp-hr for NO<sub>x</sub> plus NMHC, or 3.2 g/bhp-hr for NO<sub>x</sub> plus NMHC if NMHCs do not

exceed 0.5 g/bhp-hr (i.e., 1.0 times the applicable NOx plus NMHC Limit) and 1.0 times all other applicable regulated emissions when tested using the EURO III Test Protocol in accordance with Appendix B.

12. Subject to the provisions of this Paragraph, the NOx plus NMHC and Euro-III Composite Value Limits to which Navistar's New Technology HDDEs are certified consistent with Paragraph 11 shall be met throughout the Useful Life of the engine. Compliance with the On-Road Pull Ahead Plus Euro Limits prior to Model Year 2004 shall not subject the engine family to the longer Useful Life requirement promulgated by EPA and published at 62 Fed. Reg. 54694.

13. With respect to the EURO III Composite Value Limit and NOx plus NMHC Limit to which Navistar's engines are certified pursuant to Paragraph 11, Navistar shall be subject to and comply with all requirements of EPA's regulations and the Act, and shall be entitled to invoke the administrative procedures of EPA's regulations and the Act that would be applicable if those limits were emission standards and procedures adopted under Sections 202(a)(3) and 206 of the Act, 42 U.S.C. §§ 7521(a)(3) and 7525, including the requirements and procedures relating to certification, warranty, selective enforcement auditing under Section 206(b) of the Act, administrative recall under Section 207(c) of the Act, 42 U.S.C. § 7541(c), and record keeping and

reporting requirements, subject to the following:

(a) Navistar shall comply with all record keeping and reporting requirements associated with certification testing done to demonstrate compliance with the EURO III Composite Value Limits and a NOx plus NMHC Limit found in this Consent Decree, but need only submit the compliance statements required in Appendix B of this Decree to demonstrate compliance with all other EURO III Composite Value Limits. Navistar shall keep and provide to the United States within 30 days of a request, all emission test results, engineering analysis, and any other information which formed the basis for making such compliance statements;

(b) any dispute arising under or relating to this Consent Decree regarding the EURO III Composite Value Limits or a NOx plus NMHC Limit shall not be subject to the provisions of Section 307 of the Act, 42 U.S.C. § 7607, but instead shall be resolved through the Dispute Resolution procedures in Section XV of this Consent Decree;

(c) Section 304 of the Act, 42 U.S.C. § 7604, shall not apply to compliance with the EURO III Composite Value Limit or a NOx plus NMHC Limit; and

(d) for any hearing regarding compliance with the EURO III Composite Value Limit or a NOx plus NMHC Limit, at which, if they were standards under existing regulations an administrative law



judge would otherwise preside, EPA shall appoint a hearing officer who shall preside at such a hearing.

14. Except as provided in Paragraph 13 above, EPA may exercise any authority under its regulations or the Act, including certification, warranty, selective enforcement auditing under Section 206(b) of the Act, 42 U.S.C. § 7525(b), administrative recall under Section 207(c) of the Act, 42 U.S.C. § 7541(c), and taking enforcement actions under Sections 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, that would be applicable if the EURO III Composite Value Limits and a NOx plus NMHC Limit to which the engines are certified were emission standards and procedures adopted under Sections 202(a)(3) and 206 of the Act, 42 U.S.C. §§ 7521(a)(3) and 7525.

15. Except as specifically provided herein, this Decree does not modify, change, or limit in any way the rights and obligations of the Parties under the Act and EPA's regulations with respect to the control of emissions from HDDEs.

#### B. Contingent Emission Reduction Obligation

16. Subject to the provisions of Paragraph 18, if (and only if) after October 1, 2002, Navistar manufactures any on-road, eight cylinder (V8) or in-line six (I6) cylinder engine subject to the Act that is not a New Technology HDDE, or manufactures any New Technology HDDE subject to the Act that is not certified to emission levels at or below On-Road Ahead Plus Euro Limits, then

Navistar shall be obligated to achieve aggregate emission reductions of 40,000 tons of NOx through the manufacture of New Technology HDDEs prior to January 1, 2004, or through manufacture of non-New Technology HDDEs certified to NOx levels below the applicable FTP-based standard. Any emission reductions required by this paragraph shall be calculated by comparing the FTP based NOx level (i.e., the NOx component of the NOx plus NMHC level) or declared NOx Family Emission Limit ("FEL") to which an engine is certified to the then effective promulgated NOx standard under the Act and shall be calculated as follows:

(a) for LHDDs, NOx tons shall be 0.0174 tons per tenth of a g/bhp-hr NOx per engine;

(b) for MHDDs, NOx tons shall be 0.0741 tons per tenth of a g/bhp-hr NOx per engine;

(c) for HHDDs used in Class 8a Heavy Duty Vehicles, NOx tons shall be 0.1800 tons per tenth of a g/bhp-hr NOx per engine; and

(d) for HHDDs used in Class 8b Heavy Duty Vehicles, NOx tons shall be 0.2770 tons per tenth of a g/bhp-hr NOx per engine.

17. Should the provisions of Paragraph 16 be triggered, then on or before January 20, 2004, Navistar shall either submit to the United States a statement certifying that it has achieved the emission reduction required by Paragraph 16 or comply with the requirements of Subsection VII.C of this Consent Decree. The

amount of emission reductions specified in Paragraph 16 shall be the maximum emission reduction which Navistar shall be required to achieve, whether achieved in California or the remaining United States, under Subsection VII.B, and VII.C of this Consent Decree (should their provisions be triggered).

C. Emission Reduction Project(s)

18. If by January 1, 2004, Navistar has achieved less than all of the required emission reductions required by Paragraph 16 above, then on or before January 20, 2004 Navistar shall submit a statement certifying those emission reductions it has achieved, and then, on or before February 20, 2004, Navistar shall submit to the United States and CARB for review and approval by each a single plan ("Emission Reduction Project Plan") setting forth the project(s) ("Emission Reduction Project(s)") it intends to implement to achieve any remaining balance of emission reductions.

19. The Emission Reduction Project Plan shall include a general description of each project Navistar proposes to perform or implement, including the timetable for implementation of each project, the manner in which it will be implemented, the timetable for implementation of interim steps, a calculation of the emission reductions the project is expected to achieve, a calculation of emission reductions that interim steps are expected to achieve if any, the location in which each project

will be performed or in which the NOx reductions are likely to occur, and any issue that must be resolved for the project to be successful. Each date for commencement of a project shall be the earliest possible, given the nature of the project, after the United States' approval of the Plan in accordance with Paragraph 22.

20. All Emission Reduction Projects shall be completed no later than July 1, 2005.

21. Any proposed Emission Reduction Project shall request recognition only for NOx emission reductions that are readily quantifiable and verifiable. Each project must be one Navistar would not otherwise be legally required to perform outside of this Consent Decree and one not previously planned by Navistar. For this purpose, a project shall be deemed to have been previously planned by Navistar if the project is reflected in a written plan approved by Navistar on or before January 1, 2004.

22. The United States shall, within 30 days, review and either disapprove or approve the Emission Reduction Project Plan. If the United States disapproves the Plan, in whole or in part, it shall provide Navistar with proposed modifications, and Navistar shall have 30 days to submit a revised Plan to the United States incorporating the United States' proposed modifications. Navistar shall incorporate the modifications or the dispute shall be governed by the dispute resolution

provisions of this Decree.

23. The United States' approval of a Plan shall not be construed as a permit, modification to a permit, or determination concerning compliance with any local, state or federal law.

24. Navistar shall submit to the United States a completion report for each project set forth in the approved Emission Reduction Project Plan no later than 30 days after the completion date for the project. The report shall contain the following information with respect to each approved project:

(a) a detailed description of the project as implemented, including a summary for public disclosure; and

(b) certification that the project has been implemented or performed in accordance with the requirements of this Consent Decree and the approved Emission Reduction Project Plan and has achieved all the emission reductions claimed.

25. Navistar shall include in its biannual report required by Paragraph 54 for any biannual period in which project implementation activities have occurred or in which problems related to a project are encountered, a summary of such activities, or problems and their solutions.

26. During the term of this Consent Decree, any prepared public statements made by Navistar about the Emission Reduction Projects under this Section shall display or recite the language: "This Emission Reduction Project was undertaken pursuant to an

agreement with the United States in connection with the settlement of disputed claims in an enforcement action under the Clean Air Act."

27. Except as provided herein, Navistar shall not use or rely on the emission reductions generated as part of any Emission Reduction Project undertaken pursuant to an approved Emission Reduction Project Plan in any Federal or State emission averaging, banking, trading or other emission compliance program.

D. Nonroad Engine Standard Pull-Ahead

28. All Nonroad CI Engines manufactured by Navistar after January 1, 2005, with a horsepower equal to or greater than 300 but less than 750 shall meet 3.0 g/bhp-hr for NO<sub>x</sub> plus NMHC when measured on the applicable FTP for those engines. In addition, all Nonroad CI Engines manufactured by Navistar on or after January 1, 2005, with a horsepower equal to or greater than 300 but less than 750 shall comply with all other requirements that would apply if the engines were Model Year 2006 engines. The standards set forth in this Paragraph shall be met throughout the Useful Life of the engine.

29. With respect to the limits specified in Paragraph 28 of this Decree, Navistar shall be subject to and comply with all requirements of 40 C.F.R. Part 89 and of the Act, and shall be entitled to invoke the administrative procedures of EPA's regulations and the Act, that would be applicable if those limits

were emission standards and procedures adopted under Sections 202(a)(3) and 206 of the Act, 42 U.S.C. §§ 7521(a)(3) and 7525, including all certification, warranty, selective enforcement auditing under Section 206(b) of the Act, administrative recall under Section 207(c) of the Act, 42 U.S.C. § 7541(c), and record keeping and reporting requirements, except as follows:

(a) any dispute arising under or relating to this Consent Decree regarding such limits shall not be subject to the provisions of Section 307 of the Act, 42 U.S.C. § 7607, but instead shall be resolved through the Dispute Resolution procedures in Section XV of this Consent Decree; and

(b) section 304 does not apply to compliance with the requirements of Paragraph 28 of this Decree;

(c) for any hearing regarding compliance with the Nonroad Engine Standard Pull Ahead Limits, at which, if they were standards under existing regulations an administrative law judge would otherwise preside, EPA shall appoint a hearing officer who shall preside at such a hearing.

30. EPA may exercise any authority under its regulations found at 40 C.F.R. Part 89 or under the Act, including certification, selective enforcement auditing, administrative recall, and taking enforcement action against prohibited acts that would be applicable if the limits specified in Paragraph 28 of this Decree were emissions standards and procedures adopted

under section 213 of the Act.

31. Except as specifically provided herein, this Decree does not modify, change, or limit in any way the rights and obligations of the Parties under the Act and EPA's regulations with respect to the control of emissions from Nonroad CI Engines.

E. Averaging, Banking and Trading

32. Navistar shall retain 25 megagrams of 1997 NOx credits for MHDDEs in its 1998 A,B&T Summary Report, but any 1997 NOx credits for MHDDEs in excess of this amount shall be voided by Navistar in its 1998 A,B&T Summary Report.

33. Except as specified in this Paragraph and Paragraph 32 the applicable A,B&T regulations shall apply only to the FTP-based emission levels specified in this Consent Decree:

(a) Navistar may certify New Technology HDDEs to a NOx plus NMHC limit pursuant to Paragraph 11 using averaging under A,B&T regulations, but no New Technology HDDE manufactured prior to January 1, 2004 shall generate credits for banking or trading purposes under A,B&T unless the engine is certified to a NOx plus NMHC FEL of lower than 2.4 g/bhp-hr for NOx plus NMHC, or 2.5 g/bhp-hr for NOx plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr, and any such credits shall be calculated by comparing the NOx Plus NMHC FEL to the FTP Limit of 2.4 g/bhp-hr for plus NMHC, or 2.5 g/bhp-hr for NOx plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr (whichever is applicable). For purposes of averaging under



this Paragraph to meet the Euro III Composite Value Limit or a NOx plus NMHC Limit required by Paragraph 11, averaging of New Technology HDDEs between or among engine families in different averaging sets and regional categories is allowed.;

(b) The A,B&T regulations applicable to model year 2004 and later New Technology HDDE shall apply to all engines certified to a NOx plus NMHC FEL below 2.4 g/bhp-hr for NOx plus NMHC, or 2.5 g/bhp-hr for NOx plus NMHC if NMHCs do not exceed 0.5 g/bhp-hr (whichever is applicable); and

(c) Non-New Technology HDDEs may not simultaneously generate credits under the A,B&T program and also be used to meet the Contingent Emission Reduction Obligation required in Section VII.B

34. If Navistar declares a NOx, NOx plus NMHC, or PM FEL for an engine family, then the respective EURO III Composite Value Limits shall be the same as the NOx, NOx plus NMHC or PM FEL.

#### F. Low NOx Rebuild Program

35. Navistar shall implement, in accordance with this Section, a program to reduce NOx emissions from Navistar's Low NOx Rebuild Engines through certain software changes made to the engines through the use of a Low NOx Rebuild Kit.

36. Within 30 days of the Date of Entry, Navistar shall submit to the United States and CARB for review and approval by

each, a single plan for the implementation of its Low NOx Engine rebuild program. The plan shall include a statement by a responsible corporate official that the Low NOx Rebuild Kit for a particular engine will remove the CPFE strategy from the Low NOx Rebuild Engine.

37. Low NOx Rebuild Kits shall be available for free distribution for use on Low NOx Rebuild Engines. Beginning 180 days after entry of this Consent Decree, or 90 days following EPA's approval of the Low NOx Rebuild Plan required in Paragraph 36, whichever is later, Navistar shall begin supplying Low NOx Rebuild Kits. Low NOx Rebuild Kits shall include either the software and calibration, or instructions for obtaining the software and calibration, to reprogram the computer electronic control ("CEC") module of the Low NOx Rebuild Engine to remove the CPFE Strategy and instructions for installing such software and calibrations. In addition, each Low NOx Rebuild Kit shall include a durable label which cannot be removed intact to identify Low NOx Rebuild Engines that have had a Low NOx Rebuild Kit installed, plus EPA's letter to rebuild facilities.

38. Beginning on the date a Low NOx Rebuild Kit is available for any engine family under the terms of Paragraph 37, Navistar shall only distribute and shall only authorize the use of Low NOx Rebuild Kits for any Low NOx Rebuild Engine in that family in the case of any Engine Rebuild for:

(a) any MHDDE that has accumulated mileage greater than 185,000 miles; or

(b) an MHDDE engine that has accumulated less than the applicable mileage specified in Subparagraph 38(a), where the service event includes replacement or reconditioning of more than one major cylinder component in all of the engine's cylinders.

39. A Low NOx Rebuild Kit may not increase any regulated pollutant beyond the applicable promulgated emission standards for Model Year 1998 HDDEs when tested on the FTP.

40. Navistar shall install, and shall permit its authorized dealers, distributors, repair facilities, and rebuild facilities to install only Low NOx Rebuild Kits as required under Paragraph 37 at no added cost to the owner above the amount the owner would otherwise pay to have the engine rebuilt or repaired. Navistar shall make available, either directly or through its affiliated distribution networks for free, the appropriate Low NOx Rebuild Kit to any non-affiliated engine rebuilder or person who requests it. Navistar shall make arrangements to reimburse its authorized dealers, distributors, repair facilities, and rebuild facilities, so that the ultimate purchaser of a Low NOx Rebuild Kit will not be charged for any required reprogramming through its authorized dealers, distributors, repair facilities, and rebuild facilities, including any computer connection fees.

41. The software and calibration provided through the Low

NOx Rebuild Kit shall contain a readily accessible software identification parameter, including engine code marker or calibration marker, allowing the United States to determine whether a Low NOx Rebuild Engine has been rebuilt with the appropriate Low NOx Rebuild Kit. Navistar shall take all reasonable steps to inform its authorized dealers, distributors, repair facilities, and rebuild facilities about the requirements of this program and the availability of Low NOx Rebuild Kits, including, but not limited to, sending written notification to these parties within 120 days after Navistar's Low NOx Rebuild Plan is approved. In addition to any requirement set forth above:

(a) Navistar shall include as part of its Low NOx Rebuild Plan, submitted under Paragraph 36, the following:

(i) a description of each engine family to be covered by a Low NOx Rebuild Kit, including the model year, model, and such other information as may be required to identify the engines to be rebuilt with Low NOx Rebuild Kits;

(ii) a list of the following Navistar authorized entities who will install the Low NOx Rebuild Kit: dealers, distributors, repair facilities, and rebuild facilities, and a statement that these Navistar entities will be properly equipped and instructed to install such kits;

(iii) a description of the procedure to be followed by non-

affiliated engine rebuild facilities or persons to obtain Low NOx Rebuild Kits; and

(iv) an example of the written notification to be sent to all of Navistar's authorized dealers, distributors, repair facilities, or rebuild facilities.

(b) Navistar shall submit to EPA, 30 days prior to the date any Low NOx Rebuild Kit will be made available, the following additional information:

(i) a statement that the Low NOx Rebuild Kit will remove the CPFE strategy from the engine for which the kit is designed;

(ii) a copy of all necessary instructions to be sent to those persons who are to install Low NOx Rebuild Kit. This shall include designation of the date on or after which the Low NOx Rebuild Kits will be available from Navistar and the time reasonably necessary to perform the labor required to install the kits; and

(iii) a general description of the impact of the proposed changes on fuel consumption, driveability, and safety for each class or category of Low NOx Rebuild Engines and a brief summary of the data, technical studies, or engineering evaluations which support these conclusions.

42. The written notification to be sent to all Navistar's authorized dealers, distributors, repair facilities, and rebuild facilities shall contain the following:

(a) a copy of EPA's letter to rebuild facilities regarding the use of Low NOx Rebuild Kits;

(b) a clear description of actions that will be taken in the rebuild and an identification of the components that are affected by the Low NOx Rebuild; and

(c) a description of the procedures which non-affiliated engine rebuilders should follow to obtain appropriate Low NOx Rebuild Kits and the time reasonably necessary to perform the labor required to install the appropriate Low NOx Rebuild Kit.

43. The Plan for Navistar's Low NOx Rebuild Program submitted to the United States shall provide that any of Navistar's authorized dealers, distributors, repair facilities, or rebuilders who install a Low NOx Rebuild Kit shall be instructed to complete and affix a label to the engine. The label shall contain a statement with appropriate blank spaces for a rebuilder to indicate when and by whom the Low NOx Rebuild Kit was installed on the engine. The label shall be placed in such location and be fabricated of a material consistent with the labeling requirements of 40 C.F.R. § 85.1803(c)(1) and (c)(2). Navistar shall also provide such label to any non-affiliated engine rebuilder who installs one of its Low NOx Rebuild Kits along with instructions on how to complete the label and where to affix the label.

44. The United States shall provide Navistar with notice of

approval or disapproval of its Low NOx Rebuild Plan within 30 days of its submittal to the United States. If the Plan is disapproved, the United States shall provide the reasons for disapproval, and Navistar shall have 30 days to submit a revised Low NOx Rebuild Plan for approval. Any dispute between the Parties regarding the Low NOx Rebuild Plan shall be resolved in accordance with Section XV of this Decree.

45. Navistar shall send to the United States a copy of all written communications directed to five (5) or more persons which relate to the Low NOx Rebuild Plan directed by Navistar to engine rebuilders and other persons who are to install Low NOx Rebuild Kits under the Low NOx Rebuild Plan. Such copies shall be mailed to the United States contemporaneously with their first transmission to engine rebuilders and other persons who are to install Low NOx Rebuild Kits under the Low NOx Rebuild Plan.

46. Navistar shall provide for the establishment and maintenance of records to enable the Parties to monitor the implementation of the Low NOx Rebuild Program. The records shall include the following:

(a) the number of engines that will be subject to Low NOx Rebuild; and

(b) a cumulative total of the number of Low NOx Rebuild Kits distributed and installed.

47. Navistar shall maintain in a form suitable for

inspection, such as computer information storage devices or card files, lists of the names and addresses of engine rebuilders who were provided Low NOx Rebuild Kits and the number of kits provided. The records described in this Paragraph shall be made available to the United States upon request.

48. The records required by this section shall be retained in accordance with the provisions of Section XVIII Record Retention of this Consent Decree. Navistar's obligations under Section VII.F shall terminate ten (10) years from the date of introduction of the first Low NOx Rebuild Kit pursuant to Paragraph 37. Navistar accepts as a condition of such termination that, after termination, Navistar will only make available for Engine Rebuilds on Low NOx Rebuild Engines the software that corresponds to the Low NOx Rebuild Kit described in Paragraph 37 and that complies with Paragraph 39 and 41, but not 41(a) or 41(b).

#### VIII. IN-USE TEST PROGRAM

49. Navistar shall contribute an aggregate of Three Hundred Fifty Thousand Dollars (\$350,000.00) under this Consent Decree and the California Settlement Agreement to an In-Use Test Program to be conducted with or by Other Settling Manufacturers to assess in-use mobile monitoring technologies, establish calibration and operating procedures for selected monitoring technologies, establish a baseline emission characterization, and conduct on-



road testing to monitor in-use compliance on representative HDDEs manufactured by Navistar. The aggregate amount specified above shall be paid in three installments, of One Hundred Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-seven cents (\$116,666.67) each (unless otherwise agreed to by the United States, CARB and Navistar in writing) on or before November 1, 1999, 2000, and 2001, respectively. Navistar's contribution to an In-Use Test Program to be conducted with or by any Other Settling Manufacturer shall be an addition to, and not part of, the financial obligation of such Other Settling Manufacturer with respect to the In-Use Test Program. The \$350,000.00 specified herein is the maximum contribution to an In-Use Test Program Navistar will be obligated to pay whether under this Consent Decree or under the Settlement Agreement between Navistar and California relating to the subject matter of this Consent Decree.

50. As an alternative to providing funding to or participating in a program with Other Settling Manufacturers, Navistar shall have the option of designing its own plan for in-use testing consistent with the objectives in Paragraph 49 that shall obligate Navistar to expend no more than the amount specified in Paragraph 49. If Navistar elects this option, then prior to December 1, 1999, Navistar shall submit to the United States and CARB, for review and approval by each, a single In-Use Test Program Plan. Within thirty (30) days after submission of

the proposed Plan, the United State shall approve the Plan, or propose modifications. Navistar shall incorporate the modifications or the dispute shall be governed by the dispute resolution provisions of this Decree.

#### IX. ADDITIONAL DATA ACCESS, MONITORING AND REPORTING REQUIREMENTS

##### A. Access to Engine Control Module Data

51. Within 90 days after the Date of Entry of this Consent Decree, Navistar shall provide EPA with current decoder tools, passwords, and any other device or information required to obtain access to data from Navistar's HDDEs necessary to determine reported output torque from an engine. Thereafter, until the termination of this Consent Decree, Navistar shall provide EPA with any modified tool or device and any changed information promptly after any modification or change is made, so as to ensure EPA's continuing capability to readily access such data. At the time that Navistar provides to EPA any device or information required by this Paragraph, Navistar may designate all or a portion of the information provided to EPA, or obtainable by EPA through the use of the device or information provided directly, as Confidential Business Information in accordance with 40 C.F.R. Part 2.

52. On or before January 30, 1999, and on or before January 30 of each year thereafter through 2003, Navistar shall submit to EPA a statement containing information in its possession or

control which correlates:

(a) the reported output torque or estimated torque (e.g. fuel desired) with actual output torque;

(b) the reported output RPM with actual engine RPM; and

(c) the commanded injection timing with actual injection timing in DBTDC.

#### B. Compliance Representative

53. Within fifteen (15) days of entry of this Consent Decree, Navistar shall designate a duly authorized representative whose responsibility shall be to oversee Navistar's program for implementation of the measures specified in provisions of this Consent Decree governing the Model Year 2004 Standard Pull Ahead, the Contingent Emission Reduction Obligation, the Nonroad Engine Standard Pull Ahead, the Low NOx Rebuild Program, and the In-Use Test Program, and to file such reports and certifications as are required under this Consent Decree. The designated representative shall participate in the briefings specified in Paragraph 55 and shall be responsible for providing all additional information and documentation requested by the United States in accordance with this Consent Decree.

#### C. Progress Reporting

54. In addition to any other requirement of this Consent Decree, Navistar shall submit to EPA written biannual progress reports that describe the actions which have been taken toward

achieving compliance with this Consent Decree during the previous six months, including but not limited to actions related to compliance with Model Year 2004 Standard Pull Ahead, the Contingent Emission Reduction Obligation, the Nonroad Engine Standard Pull Ahead, the Low NOx Rebuild Program, and the In-Use Test Program. Navistar may designate all or a portion of a report as Confidential Business Information in accordance with 40 C.F.R. Part 2.

55. Navistar shall submit an initial progress report to EPA within forty-five (45) days of the close of the biannual period during which this Consent Decree is entered and within thirty (30) days of the close of each biannual period thereafter, through and including the biannual period in which this Consent Decree is terminated pursuant to Section XXV of this Consent Decree, containing the information required by Paragraph 54. If requested by the United States, Navistar shall provide comprehensive briefings for the United States to discuss the progress of implementation of this Consent Decree.

56. Each notice, submission, or report required by this Consent Decree shall contain the following statement signed by a responsible corporate official: "To the best of my knowledge, based on a thorough investigation by me or persons acting under my supervision and control, I certify that the information contained in or accompanying this submission is true, accurate

and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fines and imprisonment for knowing violations." Each notice, submission or report under this Consent Decree shall be accompanied by a transmittal letter referencing the appropriate Paragraph of this Consent Decree. Navistar shall not object to the admissibility in evidence of any such notice, submission, or reports, except on the grounds of relevancy, in any proceeding to enforce this Consent Decree.

57. Compliance with the reporting requirements of this Consent Decree shall not relieve Navistar of its obligation to comply with any other reporting requirements imposed by any applicable federal, state, or local law, regulation, or permit.

#### X. NON-CIRCUMVENTION PROVISIONS

58. Navistar shall not, directly or indirectly through its dealers, distributors, or other third parties (including any present or future manufacturer of HDDEs or Nonroad CI Engines), circumvent the requirements of this Consent Decree through leasing, licensing, sales, or other arrangements, or through stockpiling (i.e., build up of an inventory of engines outside normal business practices before a new limit under this Consent Decree takes effect).

59. All HDDEs and Nonroad CI Engines manufactured at any facility owned or operated by the Navistar on or after January 1,

1998, for which a Certificate of Conformity is sought, must meet all applicable requirements of this Decree, regardless of whether Navistar still owned, owns, operated, or operates that facility at the time the engine is manufactured.

#### XI. NOTICE AND SUBMITTALS

60. Whenever, under the terms of this Consent Decree, a notice, submission, report, or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Such notice shall be sent to the Parties as follows:

As to the United States:

Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044

*and*

Director, Air Enforcement Division (2242A)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

As to Navistar International Transportation Corp.:

Vice President, Engine Engineering  
Navistar International Transportation Corp.  
10400 West North Avenue  
Melrose Park, Illinois 60160

*and*

General Counsel and Vice President  
Navistar International Transportation Corp.  
455 North Cityfront Plaza Drive  
Chicago, Illinois 60611

61. Any Party may change the address for providing notices to it by serving all other addressees identified above with a notice setting forth such new address.

XII. CIVIL PENALTY

62. Navistar has agreed to pay an aggregate of Two Million Nine Hundred Thousand Dollars (\$2,900,000.00) under this Consent Decree and the California Settlement Agreement to resolve federal and state claims described in those agreements. Accordingly, under this Consent Decree, within fifteen (15) days of entry of this Consent Decree, Navistar shall pay Two Million One Hundred Seventy Five Thousand Dollars (\$2,175,000.00) to the United States in the manner described below. Late payment of the civil penalty to the United States is subject to interest and fees as specified in 31 U.S.C. § 3717. Payment shall be made by Electronic Funds Transfer by 4:00 p.m. Eastern Standard Time on the due date to the Department of Justice lockbox bank in accordance with specific instructions to be provided to Navistar

upon entry of this Consent Decree and shall reference Department of Justice Case No. 90-5-2-1-2252 and the civil action number of this matter. Navistar shall transmit notice of such payments to the United States.

63. Penalty payments made pursuant to Paragraph 62 of this Consent Decree are civil penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f) and are not tax deductible for the purposes of Federal Law.

### XIII. STIPULATED PENALTIES

64. Navistar shall pay stipulated penalties to the United States as follows:

(a) AECD Reporting: for failure to comply with AECD reporting requirements of Paragraph 10: \$25,000 per certification application;

(b) Submissions and Testing: for each separate failure: to submit a Low NOx Rebuild Program Plan within the time set forth in Paragraph 36; to make payments required by the in-use testing requirements of Paragraph 49; to submit a biannual report required by Paragraph 54; to meet any interim schedule within the time required by Paragraph 19 of this Decree (should its provisions be triggered); or to comply with any requirement of Section XVIII (Access to Information):



<u>Days of Non-compliance or violation</u>	<u>Penalty per violation per day</u>
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1 <sup>st</sup> to 30 <sup>th</sup> day	\$100
31 <sup>st</sup> to 60 <sup>th</sup> day	\$250
After 60 days	\$500

(c) Low NOx Rebuild: for failure to comply with any schedule in the approved Low NOx Rebuild Plan within the time frames required by Paragraph 37:

<u>Days of Non-compliance or violation</u>	<u>Penalty per Violation per day</u>
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1 <sup>st</sup> to 30 <sup>th</sup> day	\$500
After 30 days	\$2,000

(d) Right of Entry: for failure to comply with the requirements of Paragraph 85, \$5,000 per day per violation.

(e) Emission Reduction Project Plan and In-Use Test Program Plan: for failure to submit an Emission Reduction Project Plan within the time set forth in Paragraph 18 (should its provisions be triggered) or an In-Use Test Program Plan within the time set forth in Paragraph 50 (if Navistar elects this alternative) as follows for each day of delay:

<u>Days of Non-compliance or violation</u>	<u>Penalty per Violation per day</u>
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1 <sup>st</sup> to 30 <sup>th</sup> day	\$250
31 <sup>st</sup> to 60 <sup>th</sup> day	\$500
After 60 days	\$750

(f) Emission Reduction Projects: for failure to complete any project set forth in an approved Emission Reduction Project Plan under Paragraph 19 (should its provisions be triggered)

within the times required by Paragraph 20, or agreed to by the Parties in writing, for each day of delay for each project:

<u>Days of Non-compliance or violation</u>	<u>Penalty per Violation per day</u>
1 <sup>st</sup> to 30 <sup>th</sup> day	\$250
31 <sup>st</sup> to 60 <sup>th</sup> day	\$750
After 60 days	\$1,500

65. Stipulated penalties provided for in this Consent Decree shall automatically begin to accrue on the day performance is due or the non-compliance occurs, and shall continue to accrue through the day performance is completed or the non-compliance ceases. The amounts specified in Subparagraph 64(b), (c), (e), and (f) shall be the maximum stipulated penalties for which Navistar shall be liable for any particular violation under those Subparagraphs, whether the penalties are paid to the United States, CARB, or both. Nothing herein shall be construed to prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Payment of stipulated penalties as set forth above is in addition to, and the United States specifically reserves all other rights or remedies which may be available to the United States by reasons of Navistar's failure to comply with the requirements of this Consent Decree, or any federal, state or local law or regulation applicable to Navistar's HDDEs.

66. Stipulated penalties from the date of accrual are due and payable upon demand by the United States on or before the

thirtieth day following the demand and shall be due and payable monthly thereafter. Late payment of stipulated penalties shall be subject to Interest and fees as specified in 31 U.S.C. § 3717. All stipulated penalties shall be paid by cashiers or certified check or electronic funds transfer, payable to the "Treasurer, United States of America," and sent to U.S. Attorney's Office for the District of Columbia, 555 4<sup>th</sup> Street N.W., Washington, D.C. 20001, referencing the civil action number of this matter. A copy of the transmittal letter and check shall be sent to the United States.

67. Stipulated penalties shall continue to accrue during any Dispute Resolution process. Should Navistar dispute its obligation to pay part or all of a stipulated penalty, it shall place the disputed amount demanded by the United States in a commercial escrow account pending resolution of the matter and request that the matter be resolved through the Dispute Resolution procedures in Section XV of this Consent Decree. In the event the Court resolves the dispute in Navistar's favor, the escrowed amount plus accrued interest shall be returned to Navistar.

68. If the United States prevails in an action to enforce this Consent Decree, Navistar shall reimburse the United States for all its costs in such action, including attorney time. Claims for such costs, including attorney time, shall proceed in

accordance with Fed. R. Civ. P. 54(d).

69. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant of this Consent Decree.

#### XIV. FORCE MAJEURE

70. "Force Majeure," for purposes of this Consent Decree, shall mean any event arising wholly from causes beyond the control of Navistar or any entity controlled by Navistar (including, without limitation, Navistar's contractors and subcontractors, and any entity in active participation or concert with Navistar with respect to the obligations to be undertaken by Navistar pursuant to this Decree), which prevents timely compliance with the requirements of this Consent Decree. The requirements of the Consent Decree include an obligation reasonably to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that the delay is minimized to the greatest extent possible.

71. "Force Majeure" does not include technological infeasibility, financial inability or unanticipated or increased costs or expenses associated with the performance of Navistar's obligations under this Consent Decree.

72. If any event occurs or has occurred that may delay compliance with any requirement of this Consent Decree, whether or not caused by a Force Majeure event, Navistar shall notify, either in writing or orally, the United States within 5 days of when Navistar first knew that the event might cause a delay. Within 10 days thereafter, Navistar shall provide in writing to the United States an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of the measures to be taken to prevent or mitigate the delay or the effect of the delay; and Navistar's rationale for attributing such delay to a Force Majeure event if Navistar intends to assert such a claim.

73. Navistar shall include with any notice, the documentation supporting its claim that the delay was attributable to a Force Majeure event. Failure to comply with the requirements of Paragraph 72 shall preclude Navistar from asserting any claim of Force Majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Navistar shall be deemed to know of any circumstance of which Navistar or any entity controlled by Navistar knew or, through the exercise of due diligence, should have known.

74. If the United States agrees that the delay or

anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree affected by the Force Majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation under the Decree.

75. If the United States does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, it will notify Navistar in writing of its decision. Within 15 days of receiving written notice from the United States of such disagreement, Navistar may submit the matter to the Court for resolution. If Navistar submits the matter to the Court for resolution, Navistar shall have the burden of proving by a preponderance of the evidence that the event is a Force Majeure as defined herein, that Navistar used best efforts to avoid a Force Majeure or minimize the delay; the duration of any delay attributable to the Force Majeure; and that it met the requirements of Paragraph 72 above. If, upon submission to the Court, the Court determines that the delay was caused by a Force Majeure event, as defined herein, the delay shall be excused, but only for the period of the actual delay resulting from the Force Majeure event. If, upon submission to the Court, the Court determines that the delay was not caused by a Force Majeure

event, as defined herein, Navistar shall pay the stipulated penalties attributable to such delay, plus accrued interest, in accordance with Paragraph 62. Any such payments shall be made within 15 days from the court's decision.

#### XV. DISPUTE RESOLUTION

76. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree unless otherwise expressly provided for in this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Navistar that have not been disputed in accordance with this Section. The United States and Navistar consent to intervention by CARB for purposes of resolution of disputes arising under the California Settlement Agreement.

77. Any dispute regarding interpretation of the meaning of this Consent Decree shall be reviewed in accordance with applicable principles of law.

78. Existing administrative hearing and other procedures applicable to currently enforceable emission limits shall apply to any dispute which arises with respect to a NOx plus NMHC Limit and the EURO III Composite Value Limits applicable to New Technology HDDEs under this Consent Decree, subject, however, to the following:

(a) EPA shall appoint a hearing officer who shall preside at any hearing at which, under existing regulations, an administrative law judge would otherwise preside; and

(b) review by the Court shall be as if it were review of final agency action under 5 U.S.C. § 706.

79. Any dispute that arises under or with respect to this Consent Decree, other than the disputes subject to Paragraph 78 of this Decree, shall in the first instance be the subject of informal negotiations between the Parties. The period of informal negotiations shall not exceed 20 days from the time the dispute arises, unless the Parties agree to extend the time period for informal negotiations. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

80. In the event the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the United States shall be considered binding, unless, within 30 days after the conclusion of the informal negotiation period, Navistar invokes the formal Dispute Resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute. This Statement of Position shall include, but not be limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Navistar.



81. Within 30 days after receipt of Navistar's Statement of Position, the United States shall serve on Navistar its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States.

82. Following receipt of the United States' Statement of Position, Navistar shall have 10 days to file with the Court and serve on the United States a motion for judicial review of the dispute, otherwise the United States' Statement of Position shall be binding on Navistar. Navistar's motion for review shall set forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Navistar's motion. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law and procedure.

83. The invocation of formal Dispute Resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Navistar under this Consent Decree, unless the United States or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 67 of this Decree.

Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event Navistar does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 66 of this Decree.

#### XVI. EFFECT OF SETTLEMENT

84. Satisfaction of all the requirements of this Consent Decree and payment of Seven Hundred Twenty Five Thousand Dollars (\$725,000.00) to CARB under the California Settlement Agreement constitutes full settlement of and shall resolve all civil liability of Navistar to the United States for the civil violations alleged in the Complaint, and constitutes full settlement of and shall resolve all civil liability of Navistar to the United States with respect to civil claims for violations of the Act relating to the automatic transmission timing advance strategy installed on Navistar 7.3 liter HDDEs in the Engine Families specified in Appendix A hereto, to the extent (and only to the extent) that this strategy has been disclosed and described in amended applications for Certificates of Conformity for such engines submitted by Navistar to EPA prior to the Date of Filing of this Consent Decree.

#### XVII. RIGHT OF ENTRY

85. Until termination of this Consent Decree Navistar shall allow the United States, and its authorized

representatives, contractors, consultants, and attorneys, access, at reasonable times and with reasonable advance notice, to any facilities owned or controlled by Navistar relating to the manufacture of diesel engines and to any facilities owned or controlled by Navistar where activities related to compliance with this Decree are being performed, for the purpose of: monitoring the progress of activities required by this Consent Decree; verifying any data or information submitted by Navistar to the United States; inspecting records; or conducting testing. This provision is in addition to, and in no way limits or otherwise affects, any right of entry, inspection or information collection held by the United States pursuant to the Act or other applicable federal law or regulations promulgated thereunder.

#### XVIII. ACCESS TO INFORMATION AND RETENTION OF DOCUMENTS

86. Navistar shall preserve, for five (5) years after termination of the applicable Section or Subsection of this Consent Decree, an original or a copy of all data and final documents and records (including all electronic documents and records, but excluding drafts, where a final version exists, and notes) and information within its possession, custody or control relating to implementation of and compliance with this Consent Decree, including, but not limited to, testing, analysis, production records, receipts, reports, research, correspondence, or other documents or information related to compliance with the

Consent Decree.

87. Navistar shall provide to the United States, upon request, originals or copies of all documents and information within its possession, custody or control relating to implementation of and compliance with this Consent Decree, including, but not limited to, testing, analysis, production records, receipts, reports, research, correspondence, or other documents or information related to compliance with the Consent Decree.

88. All information and documents submitted by Navistar to the United States pursuant of this Consent Decree shall be subject to public inspection, unless identified and supported as confidential business information by Navistar in accordance with 40 C.F.R. Part 2.

89. With respect to any documents required to be submitted hereunder Navistar may assert certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Navistar asserts such a privilege in lieu of providing documents, Navistar shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description

of the contents of the document, record, or information; and (6) the privilege asserted by Navistar. However, no document, report or other information required by this Consent Decree to be created, generated, or maintained shall be withheld on the grounds that it is privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to the United States in redacted form to mask the privileged information only. Navistar shall retain all records and documents it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been finally resolved in Navistar's favor.

#### XIX. NON-WAIVER PROVISIONS

90. This Consent Decree does not pertain to any matters other than those expressly specified in Paragraph 84 of this Decree. Nothing in this Consent Decree shall relieve Navistar of its obligation to comply with applicable Federal, State and local laws and regulations, and this Consent Decree does not release the liability, if any, of any person or entity for any civil claims other than the civil claims referred to in Paragraph 84, or for any criminal claims.

#### XX. THIRD PARTIES

91. This Consent Decree does not limit, enlarge or affect the rights of any Party to the Consent Decree as against any third parties. Nothing in this Decree shall be construed to

create any rights in, or grant any cause of action to, any person not a Party of this Consent Decree.

#### XXI. COSTS

92. Each Party to this action shall bear its own costs and attorneys' fees.

#### XXII. PUBLIC NOTICE AND COMMENT

93. The Parties agree and acknowledge that final approval of this Consent Decree by the United States is subject to the public notice and comment requirements of 28 C.F.R. § 50.7, which requires, inter alia, notice of this Consent Decree and an opportunity for public comment. The United States may withdraw or withhold its consent if the public comments demonstrate that entry of this Consent Decree would be inappropriate, improper, or inadequate. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it seeks entry of this Consent Decree. Navistar agrees to the entry of this Consent Decree without further notice.

#### XXIII. MODIFICATION

94. There shall be no modification of this Consent Decree without written approval by the Parties to this Consent Decree and Order of the Court.

#### XXIV. RETENTION OF JURISDICTION

95. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of

the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with the Dispute Resolution procedures set forth in Section XV.

#### XXV. EFFECTIVE DATE AND TERMINATION

96. This Consent Decree shall be effective upon the date of its entry by the Court.

97. Termination of all or any part of this Consent Decree shall occur only as provided in this Section. Termination of a part of this Consent Decree pursuant to Subparagraphs 97(a) or (b) below shall not terminate any other part.

98. (a) The requirements for on-road HDDEs set forth in Section VI of this Consent Decree and the Model Year 2004 Standard Pull-Ahead requirements set forth in Subsection VII.A of this Consent Decree shall terminate on January 1, 2004. For on-road engines manufactured before January 1, 2004, and certified to a NOx plus NMHC Limit and Euro III Composite Value Limits, the requirements applicable for the Useful Life of such engines shall remain in effect through the Useful Life of such engines.

(b) Should the Contingent Emission Reduction Obligation provisions of Subsection VII.B of this Consent Decree be

triggered, the requirements therein may be terminated by further order of this Court if Navistar certifies to the United States that:

(i) Navistar has paid all civil penalties, interest, and stipulated penalties due under the Consent Decree;

(ii) Navistar has achieved all of the emission reductions required by Section VII.B, or it has submitted, and EPA has approved, an Emission Reduction Project Plan in accordance with Subsection VII.C;

(iii) no matter subject to dispute resolution pursuant to Section XV remains unresolved; and

(iv) no enforcement action of this Consent Decree is pending.

(c) Should the obligation to submit an Emission Reduction Project Plan under Section VII.C of this Consent Decree be triggered, the requirements therein may be terminated by further order of this Court if Navistar certifies to the United States that:

(i) Navistar has paid all civil penalties, interest, and stipulated penalties due under the Consent Decree;

(ii) Navistar has fully implemented each Emission Reduction Project required by the approved Emission Reduction Project Plan and has complied with all of the requirements of this Consent Decree with respect to such Projects;



(iii) no matter subject to dispute resolution pursuant to Section XV remains unresolved; and

(iv) no enforcement action for this Consent Decree is pending.

(d) The Nonroad Engine Standard Pull-Ahead requirements set forth in Section VII.D of this Consent Decree shall terminate as of December 31, 2005, provided that Navistar has previously complied with the certification requirements set forth in Subparagraph 98(b) and further certifies to the United States, at least 30 days prior to such termination date, that it has met all of the requirements of Section VII.C of this Decree; and provided that United States does not dispute the certification under the dispute resolution provisions of this Consent Decree prior to December 31, 2005. For Nonroad CI Engines manufactured before January 1, 2006, and certified to a NOx plus NMHC complying with Section VII.D of this Consent Decree, the requirements applicable for the Useful Life of such engines shall remain in effect through the Useful Life of such engines.

(e) The entire Consent Decree may be terminated by further order of the Court if Navistar has previously met the certification requirements in Subparagraphs 98(b) and (c) above, and further certifies to the United States that:

(i) Navistar has fully and successfully completed all of the requirements of Section VII and VIII of this Consent Decree;

(ii) no matter subject to dispute resolution pursuant to Section XV remains unresolved; and

(iii) no action to enforce the requirements of this Consent Decree is pending.

(f) Notwithstanding final termination under Subparagraph (e) above:

(i) the United States retains the right to enforce the requirements for the Useful Life requirements set forth in Subparagraphs 98(a) and (d) above even after the termination of the entire Consent Decree;

(ii) Navistar will continue to comply with the requirements of Section VII.F (Low NOx Rebuild Program) after such termination; and

(iii) the United States may reopen the Consent Decree for purposes of enforcing such Useful Life and Low NOx Rebuild Program requirements.

99. Any dispute regarding termination of all or any part of this Consent Decree shall be resolved pursuant to the dispute resolution provisions of Section XV of this Consent Decree.

#### XXVI. ENTIRE AGREEMENT

100. This Consent Decree contains the entire agreement between the United States and Navistar with respect to the subject matter hereof. The Parties acknowledge that there are no representations, agreements, or understandings relating to the

settlement other than those expressly contained in this Consent Decree.

#### XXVII. SIGNATORIES

101. The Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice and the undersigned representative of Navistar each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents.

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Consent Decree -- Signature Page

FOR PLAINTIFF, UNITED STATES OF AMERICA

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FOR Navistar International Transportation Corp.,

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Patrick E. Charbonneau  
Vice President, Engine Engineering  
Navistar International Transportation Corp.  
10400 West North Avenue  
Melrose Park, Illinois 60160

So entered in accordance with the foregoing this \_\_\_\_\_ day  
of \_\_\_\_\_ , 199\_\_\_\_.

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United States District Judge

Appendix A-- Navistar Electronically-Controlled HDDE Engine Families

1996	TNV466D8DARB	1998	WNVXH0466FNC
	TNV466D8DATB		WNVXH0466CCB
	TNV530D8DARA		WNVXH0466CCD
	TNV530E8DASA		WNVXH0466FNA
	TNV444C8DOSA		WNVXH0530CCB
	TNV444C8DASW		WNVXH0530FNC
	TNV444C8DORA		WNVXH0530FNA
	TNV444C8DARW		WNVXH0530CCD
	TNV7.3C8DAAW		WNVXL0466ANA
	TNV530R8DASE		WNVXL0530ANA
	TNV7.3C8DAAA		WNVXL0530ANB
	TNV7.3B8D0AA		WNVXH0444CCB
			WNVXH0444CCD
1997	VNV466D8DARW		WNVXH0444FNC
	VNV466D8DASA		WNVXH0444FNA
	VNV530D8DARA		
	VNV530E8DASA	1999	XNVXH07.3FCC
	VNV444C8DARW		XNVXH07.3CCD
	VNV444C8DASW		XNVXH07.3ACA
	VNV530R8DASC		XNVXH07.3ACB
	VNV530R8DARA		XNVXH07.3ACC
	VNV530R8DASE		
	VNV7.3C8DAAW		
	VNV7.3C8DAAA		
	VNV7.3W8D0AK		



## Appendix B - Technical Requirements for EURO III Test Protocol<sup>(1)</sup>

1. EURO III Requirements. Engines must meet the weighted average emission limit values applicable to the EURO III test set forth in this Consent Decree, when tested using the EURO III steady state test and emission weighting protocols identified as the "ESC test" in Annex III to the Proposal adopted by the Commission of the European Union on December 3, 1997.<sup>(2)</sup> The modal test point definition and weighting factors will be taken directly from Annex III. Except as specifically stated in this Appendix, in all other respects testing shall be conducted in accordance with 40 C.F.R. Part 86, unless the company proposes, and EPA approves, an alternative procedure. Engines must meet the applicable weighted average emission levels as required by this Consent Decree when new and throughout the Useful Life of the engine.

1.1. As part of the certification process, the manufacturer must provide ESC test results to EPA. Weighted average emissions of all regulated emissions from the ESC test must comply with the applicable limits set forth in this Consent Decree. In addition to the weighted average data, the manufacturer must supply brake specific gaseous emission data according to the ESC protocol for each of the 13 test points in the ESC test, and for up to three supplemental points selected by EPA and communicated to

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1) These emission limits and testing requirements are in addition to any requirements applicable under the Code of Federal Regulations, and are subject to provisions for record keeping, reporting, testing and liability for non-compliance established under the Consent Decree. The waiver of the requirement to submit test data for certain emissions found in 40 C.F.R. § 86.094-23(c)(2)(i) applies to these provisions. Except as specifically noted herein or in the Consent Decree, all existing EPA regulations and policies shall apply to any testing conducted under this test protocol. All procedures set forth in this Consent Decree shall be implemented in accordance with sound engineering practice.

2) Proposal adopted by the Commission of the European Union on 3 December 1997, for presentation to the European Council and Parliament, titled Draft Proposal for a Directive of the European Parliament and Council Amending Directive 88/77/EEC of 3 December 1987 on the Approximation of the Laws of the Member States Relating to the Measures to be Taken Against the Emission of Gaseous and Particulate Pollutants From Diesel Engines for Use in Vehicles. Fuel meeting the specifications of 40 C.F.R. § 86.1313-94(b) for exhaust emissions testing will be substituted for fuel specified in this Directive.

the manufacturer by close of business day prior to the test if requested by Navistar 10 business days prior to the test. If the EPA fails to delineate the supplemental test points within the appropriate time period, the manufacturer shall test at three randomly generated supplemental test points.<sup>(3)</sup> For each of these 16 test points, the manufacturer must provide the concentrations, mass flow rates, and brake-specific emissions of all regulated gaseous emissions plus CO<sub>2</sub>, as well as exhaust smoke opacity ("k" value). Weighted average PM shall be measured and reported by the manufacturer. The test data must also include the values of all emission-related engine control variables at each test point.

- 1.1.1.1 The ESC test must be conducted with all emission-related engine control variables in the maximum brake-specific NO<sub>x</sub> emissions state which could reasonably be expected to be encountered during normal engine operation and use for a 30 second or longer averaging period at the given test point. The manufacturer must include in the Certificate Application a statement that the test conditions correspond to the maximum NO<sub>x</sub> producing condition for a 30 second or longer averaging period reasonably expected to be encountered during normal engine operation and use.<sup>(4)</sup>
- 1.1.1.2 As part of its certification application, the manufacturer must submit a statement that its engines will comply with the applicable EURO III Composite Value Limit values and testing requirements throughout the useful life of the engine.
- 1.1.1.3 For the purpose of submission of the certification application, the manufacturer shall conduct the ESC test within the temperature range of 68F to 86F.

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3) The ESC test protocol includes only a NO<sub>x</sub> check at the supplemental test points. However, under the Consent Decree and this Test Protocol regulated gaseous emissions are included.

4) Notwithstanding the testing requirements within Section 1.1.1, any white smoke, altitude, engine start-up, and/or engine overtemperature/protection AECDs may be excluded when determining the maximum NOX emissions state for ESC test if, and only if, disclosed in Navistar's applications for Certificates of Conformity and otherwise consistent with applicable EPA regulations and guidance.

- 1.2 The composite weighted average ESC emissions limits described in section 1.1 apply to testing of certification engines, production line engines, and in-use engines.